

Editor's Note: Reconsideration denied by Order dated Dec. 3, 2002

ROBERT C. LeFAIVRE

IBLA 98-16

Decided June 20, 2001

Appeal from an order of the Green River Resource Area Manager, Bureau of Land Management, directing appellant to cease all use of lands within various millsites and to remove all personal property from those claims. WYW 123560.

Affirmed.

1. Administrative Procedure: Decisions--Mill Sites:
Generally--Mill Sites: Determination of Validity

Where the Board of Land Appeals has affirmed a determination that various millsites are null and void, BLM correctly takes action to enforce that decision by ordering the cessation of any occupancy of those millsites, absent a decision or order of a Federal court to the contrary.

2. Administrative Procedure: Generally--Appeals:
Generally--Rules of Practice: Appeals: Generally

Where the Board has previously held that various millsites were null and void and that decision constitutes the final determination of the matter for the Department, the correctness of that determination is not subject to attack before the Board in a collateral proceeding arising out of BLM's actions in implementing the Board decision, absent compelling legal or equitable considerations.

APPEARANCES: Robert C. LeFaivre, Rock Springs, Wyoming, pro se; Lowell L. Madsen, Esq., Assistant Regional Solicitor, Office of the Regional Solicitor, Lakewood, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Robert C. LeFaivre has appealed from an order issued by the Green River Resource Area Manager, Bureau of Land Management (BLM), dated August 12, 1997, directing him to cease all use and occupancy of lands embraced in various millsites and granting him 30 days in which to remove all personal property from those claims and reclaim the disturbed area. We affirm.

The eight millsites covered by the order are the Invisible Nos. 1 to 8 (WMC 204033 through 204040), situated in the SW1/4NW1/4 sec. 10, T. 19 N., R. 103 W., Sixth Principal Meridian. These claims were the subject of a validity contest brought by BLM in 1993 (WYW 123560). Subsequent to a hearing, Administrative Law Judge Ramon M. Child held the eight millsites null and void because they were not being used or occupied for mining or milling purposes as required by section 15 of the Mining Law of 1872, as amended by the Act of May 18, 1960, 74 Stat. 7, 30 U.S.C. § 42(b) (1994). LeFaivre thereupon pursued an appeal to this Board, which, by decision styled United States v. LeFaivre, 138 IBLA 289 (1997), affirmed Judge Child's determination.

While the appeal from Judge Child's decision was still pending before the Board, LeFaivre filed an "Existing Occupancy Notification" pursuant to the provisions of 43 CFR 3715.4(b). That regulation provided that individuals occupying land under the mining laws as of August 1996 would be permitted to continue in their occupancy for one year without otherwise complying with the procedures set for in 43 CFR Subpart 3715 provided, inter alia, those individuals notified BLM by October 15, 1996, utilizing a format specified by BLM.

BLM's August 12, 1997, Order recounted the foregoing facts and noted that "[t]he grace period [provided by 43 CFR 3715.4(b)] ends on August 18, 1997, and your use and occupancy of the land is not 'reasonably incident' to mining, milling, processing, or beneficiation" as required by 43 CFR 3715.2(a). Order at 1. BLM ordered appellant to cease all occupancy of the public lands embraced by the Invisible millsites as of August 18, 1997, and further ordered appellant to remove "all personal property (structures, mobile homes, vehicles, non operative equipment, and other ancillary items) from the land and reclaim the disturbed area within 30 days from receipt" of the order. Id. BLM advised appellant that failure to comply with the terms of its order could result in the filing of criminal charges as provided by 43 CFR 3715.8, and that any personal property left on the claims 90 days from receipt of the order would become the property of the United States. Id. at 1-2.

In his statement of reasons in support of his appeal, LeFaivre generally argues that, notwithstanding the Board's decision in United States v. LeFaivre, supra, affirming the determination that the subject millsites were null and void, no action should be taken to require him to vacate the lands embraced by those claims until he has fully exhausted all avenues of appeal. He also seemingly argues that, in its previous decisions, the Board failed to consider that the reason that the millsites had not been used or occupied in conformity with the dictates of the mining law was Government interference with his right to develop certain mining claims. 1/ Neither of these arguments is availing.

1/ On Apr. 2, 2001, counsel for BLM submitted a request for expedited consideration. In addition to arguing that expedited consideration was needed to permit BLM to address appellant's continued occupancy of millsite claims determined to be null and void by the Board in its decision in

[1] Pursuant to established regulations, 43 CFR 4.1(b) (3), the Board of Land Appeals decides finally for the Department appeals relating to the use and disposition of the public lands and the mineral resources located thereon. Assuming its jurisdiction has been properly invoked, a decision issued by the Board is as authoritative as if it had been written by the Secretary, personally, and absent the favorable consideration of a timely filed motion for reconsideration (see 43 CFR 4.403), no further appeal lies in the Department. ^{2/} See generally Alamo Ranch Co., 135 IBLA 61, 65-71 (1996); Exxon Company, U.S.A., 15 IBLA 345, 353 (1974). Individuals who feel themselves aggrieved by a decision of the Board may, of course, seek review in the Federal courts. But, until such time as a Federal court intervenes to either reverse a Board determination or affirmatively stay implementation of the decision, officials of BLM are required to treat the Board's decision as the law of the case and to proceed accordingly. See Simons v. BLM, 135 IBLA 125, 128-29 (1996).

In the instant case, the Board's decision in United States v. LeFaivre, *supra*, affirmed Judge Child's determination that the eight millsite claims were null and void. LeFaivre's continued occupancy of those millsites after the issuance of this decision was no longer even colorable under the mining laws. It was, however, authorized under provisions of 43 CFR 3715.4(b). But, as noted above, that regulation only permitted the continuance of on-going occupancy of a mining claim or

(fn. 1 continued)

United States v. LeFaivre, *supra*, counsel also submitted substantive arguments as to why either the instant appeal should be dismissed or the decision below should be affirmed. By Order dated May 2, 2001, we granted appellant's request for an extension of time to respond to these arguments. We noted however that "in view of how long this matter has already been pending, no further pleadings will be accepted nor will any further extensions of time be granted." Order of May 2, 2001, at 1.

On June 7, 2001, we received an additional request for an extension of time. In this request, appellant adverted to on-going health problems which appellant asserted prevented him from timely replying to BLM's submission.

In view of the time which this matter has been pending and in light of our previous direct admonition that no further extensions of time would be granted, we are not disposed to the granting of any further extensions. On the other hand, we recognize that appellant's health circumstances may, indeed, constrict his ability to respond at the present time to the substantive arguments presented by BLM in its April 2 submission, arguments which, it is clear, would have more properly been presented in an answer to appellant's statement of reasons in support of his appeal. Accordingly, we deem it appropriate and fair to strike all of the Apr. 2, 2001, submission to the extent that it contained substantive arguments relating to the subject matter of this appeal. In view of our actions herein, appellant's motion for an extension of time is denied as moot.

^{2/} While the Secretary of the Interior does retain supervisory authority over the Board and may, in his or her discretion, take jurisdiction over any case pending before the Department, no such action occurred with respect to the Board's decision in United States v. LeFaivre, *supra*.

millsite for a single year, after which time all occupants were required to comply with the substantive provisions of 43 CFR Subpart 3715. BIM duly informed appellant in the decision under review that his authorization for continued occupancy under 43 CFR 3715.4(b) expired on August 18, 1997, and, since his claims had been determined to be null and void, he was required to vacate the premises. This was altogether proper and, in the absence of any affirmative action by a Federal court to reverse or delay implementation of the Board's determination in United States v. LeFaivre, supra, we hereby affirm BIM's actions.

[2] Appellant has also raised various challenges to this Board's decision in United States v. LeFaivre, supra. As noted above, however, that decision now constitutes the final determination of the Department as to the validity of the Invisible Nos. 1 to 8 millsites and is no longer subject to attack before the Board either directly or in a collateral proceeding such as this, absent compelling legal or equitable considerations, none of which are indicated herein. See, e.g., State of Alaska, 140 IBLA 205, 211 (1997); August & Mary Sobotka, 79 IBLA 310 (1984).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

I concur:

Bruce R. Harris
Deputy Chief Administrative Judge